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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,454	01/18/2007	Hubert Wolschaffner	JFIE6.002APC	8030
29995 7590 07/07/2009 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER THOMPSON, JEWEL VERGIE				
ART UNIT 2855		PAPER NUMBER		
NOTIFICATION DATE 07/07/2009		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com  
eOAPilot@kmob.com

### Office Action Summary

**Application No.**

10/563,454

**Applicant(s)**

WOLFSCHAFFNER, HUBERT

**Examiner**

JEWEL THOMPSON

**Art Unit**

2855

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SE/US)  
Paper No(s)/Mail Date 4/4/06
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7-15 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: a material recognition system, a computer unit and a metering control unit. There is no structural connection between these parts.

### ***Claim Objections***

Claims 11 and 12 are objected to because of the following informalities:

Claim 11, the applicant does not disclose in the specification nor the drawings the material recognitions system is arranged in a flow meter. Appropriate correction is required.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a) because they fail to show **the material recognition system arranged in a flow meter** as described in the

specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 7-9 and 13 are rejected as best understood under 35 U.S.C. 102(b) as being anticipated by Massen (5,794,788).

**Regarding claims 1 and 7**, Massen teaches an apparatus and method for sorting materials providing a material recognition system (40), a computer unit (84), and a metering control unit (60, col. 9, lines 3-6) with which the output of the metering device (48) is adjusted to the set-point conveying rate depending on the instantaneous calorific value.

**Regarding claim 8**, Massen teaches the material recognition system comprises a contactless material sensor (42, fig. 1), and a radiation source with which the flowing material can be irradiated with a radiation to which the material sensor is sensitive

**Regarding claims 2 and 9**, Massen teaches the material sensor is an NIR spectroscopic sensor and the radiation source emits light in the near-infrared range, especially that the radiation source is a halogen lamp (col. 3 lines 20-30).

**Regarding claim 10**, Massen teaches the material recognition system is arranged directly before the metering device (fig. 2).

**Regarding claims 3 and 13**, Massen teaches the flowing materials are plastic materials (col. col. 1, lines 4-5)

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Massen.

Regarding claims 4-6, Massen fails to explicitly teach a method wherein the output of the metering device is regulated by taking into account the distance between metering device and burner system; the output of the metering device is controlled or regulated by changing the speed of the metering device; the output of the metering device is regulated in the case of pneumatic conveyance by changing the air quantity and/or air speed. However, Massen does teach computers (84 and 92). It would have been obvious to one of ordinary skill in the art at the time that the invention was made to have used the computers of Massen for the purpose of controlling the speed of the metering device as well as the conveyance device so that the material can be kept flowing at a constant rate.

Claims 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Massen in view of Cuisick (6,884,064).

**Regarding claim 14**, Massen fails to teach the burner system is a rotary kiln for cement production. Cusick et al teaches a burner mechanism for a rotary kiln (col. 2, lines 26-28). It would have been obvious to one of ordinary skill in the art at the time that the invention was made to have used the burner mechanism for a rotary kiln of Cusick in the apparatus of Massen for the purpose of producing cement.

Claims 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Massen in view of Gmiir (5,121,638).

**Regarding claim 15**, Massen fails to teach the metering device and the flow meter form a unit, especially a rotary metering weigher. Gmiir teaches a weighing method and a device for determining the weight and flow of the bulk material. It would have been obvious to one of ordinary skill in the art at the time that the invention was made to have used the computer of Cusick for actuating the control device in the apparatus of Massen for the purpose of determining the flow rate of bulk material in the weighing machine

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

4,277,022     Holdsworth et al teaches a mobile material distribution.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEWEL THOMPSON whose telephone number is (571)272-2189. The examiner can normally be reached on 7-5 m-th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lisa Caputo can be reached on 571-272-2388. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JEWEL THOMPSON/  
Primary Examiner, Art Unit 2855  
June 30, 2009